Supreme Court, U.S.
FILED
DEC 28 1992
OFFICE OF THE CLERK

No. 92-1125

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC.,

Petitioner,

Vs.

CITY OF ATLANTA, et al

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

Moreton Rolleston, Jr.
Suite 1870, Riverwood 100
3350 Cumberland Circle, N.W.
Atlanta, Georgia 30339
(404) 988-9300
Attorney for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1.

Whether the methodology of the 1991 tax reappraisal of all properties (230,000) in Fulton County and City of Atlanta, Georgia was so constitutionally flawed that it resulted in the confiscation of each taxpayer's property through excessive, aribtrary, capricious and unequal taxation that constituted an illegal taking of property without due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and constituted a violation of the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

2.

Whether the Georgia Legislature can constitutionally authorize or direct the Executive Branches of Government (City

of Atlanta and Fulton County) to delegate the authority of the Executive Branch to others by entering into contracts with private individuals to perform the functions of govenrment which are inherently the functions of the Executive Branch.

3.

Whether a group of private taxpayers has the right to bring a suit to recover money of a breached contract between Fulton County and an individual, thereby seeking to force the individual to refund the money to the County, when the County itself refuses to bring such a suit.

LIST OF ALL PARTIES

North by Northwest Civic Association, Inc.

Joint City-County Board of Tax Assessors of City of Atlanta and Fulton County

County Commissioners of Fulton County, Georgia

Tax Commissioner of Fulton County, Georgia

City of Atlanta

Cole-Layer-Trumble Company

TABLE OF CONTENTS

	Page
1. Jurisdiction of This Court	2
2. Constitutional Provisions Involved	2 & 3
3. Federal Questions First Raised	3
4. Statement of Facts	7
5. Opinion of Lower Court	A-1

TABLE OF AUTHORITIES

	Page
Fifth and Fourteenth Amendments to Constitution of United States	2

U.S. STATUTES

1. 28 U.S.C. ¶ 1254 (11)	2

GEORGIA STATUTES

1. Offical Code of Georgia Annotated §48-5-298(a)	7
2. Official Code of Georgia Annotated §48-5-306	8

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC.,

Petitioner,

Vs.

CITY OF ATLANTA, et al

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF GEORGIA

The opinion of the Supreme Court of Georgia, which is set forth in the Appendix, reversed the trial court and held that the 1991 mass tax reapprasial for the City and the County did not

violate either the Constitution of the United States or of Georgia. Said opinion is unreported (in response to Rule 21 (d) of this Court).

The grounds on which jurisdiction of this Court is envoked are the important questions regarding the application and the intrepretation of the Fifth and Fourteenth Amendments to the Constitution of the United States with regard to said mass tax reappraisal which have not, but should be, settled by this Court.

The opinion of the lower court was dated November 16, 1992 and the time of its entry was November 16, 1922. Re-hearing was not requested.

The jurisdiction of this Court to review the Order of the Supreme Court of Georgia is envoked under 28 U.S.C. ¶1254(11).

The constitutional provisions involved

are the Fifth and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF CASES

FEDERAL QUESTIONS FIRST RAISED

The federal questions sought to be reviewed were first raised in ¶9, p.8, of the original complaint filed in the trial court on October 9, 1991, which reads in pertinent part as follows:

> "The 1991 reappraisal constitutes taking of property without due process in violation of the Fifth Amendment and Fourteenth Amendment and constitutes denial of equal protection of the laws in violation of the Fourteenth Amendment of the U.S. Constitution."

Civic Association then filed a

Motion for Summary Judgment on November 7, 1991 and again in paragraph 6, page 7, of their brief in support of that Motion raised the federal questions again.

The trial court, on December 20, 1991, granted the Motion for Summary Judgment and issued a permanent injunction against the use of the 1991 tax reappraisal to determine the values of some property. The Court also issued an injunction against the use of said 1991 tax reappraisal until certain conditions had been met. This resulted in a total injunction that remained in effect until the case was heard by the Supreme Court of Georgia.

The trial court held that the 1991 mass reappraisal was unconstitutional in violation of due process and equal protection clauses of the Constitution of Georgia upon the grounds that the

appraisal was arbitrary, capricious and unequal until and if three conditions, which were described by the Court, were met.

The City and County appealed the decision of the trial court. The federal questions were raised by the Civic Association in its brief as Appellees on pages 22-25. The federal questions were argued orally before the Supreme Court on July 1, 1992.

The opinion of the Georgia Supreme Court, dated November 16, 1992, held that the summary judgment was improperly granted and that the trial court had no equitable jurisdiction to consider the constitutionality of the 1991 reappraisal. See page 2 of the Supreme Court's decision which reads in pertinent part as follows:

"We...reverse the (trial) court's ruling, on summary jdugment, that the mass reappraisal was unconstitutional."

Page 12 of the Opinion of the Georgia Supreme Court reads in part as follows:

"we reverse the grant of summary judgment to the extent it was based on the conclusion that CLT's creation of neighborhoods violated due process and equal protection."

On page 13, the Court held that the trial court erred by granting summary judgment to the Civic Association "on the ground that the reappraisal of property in excess of two acres violated equal protection and due process".

On page 15 of the Opinion of the Georgia Supreme Court, that Court concluded that the Civic Association had not met its burden to show that the Legislature can not constitutionally authorize the County to delegate its duty to a private individual and that Official Code of Georgia Annotated § 48-5-298(a) is unconstitutional.

STATEMENT OF FACTS

Most of the City of Atlanta is situated in Fulton County; a very small part is in adjoining DeKalb County. The population of the City is just under 500,000 but the population of metropolitan Atlanta is approximately 2,800,000. Fulton County is a large county; its west boundary is 75 miles long; there are in excess of 230,000 parcels of land in the City of Atlanta

and Fulton County.

All real estate and all other taxable property is required by law to be returned at its fair market value as of January 1st of each year. Official Code of Georgia Annotated § 48-5-306. Each of the 159 counties of the State of Georgia must submit their tax digest for approval by the State Revenue Commissioner, who has the authority to increase the digest. In the last three years before 1992 the State Revenue Commissioner has ordered a total increase in the digest of Fulton County in the amount of about 30%.

The Joint City-County Board of Tax Assessors of City of Atlanta and County of Fulton makes the assessment of all property in the County and the City and all taxes are paid to the Tax

Commissioner of Fulton County. In 1990 Fulton County employed Cole-Layer-Trumble Company (C.L.T.), one of the Defendants in the original complaint, to revalue and reassess all property in the County and the City. The tax assessments for property for 1991 were those which were determined by C.L.T. Tax assessments increased the tax digest of the County and City by approximately 40%. When the notices were sent out to the taxpayers about the new assessments, 30,000 taxpayers filed an appeal from the assessments on their properties and these appeals are still pending. 27,262 of these appeals were reviewed by the Tax Assessors and 55% of those were found to be in error and the error was always on the high side. Parties other than the Civic Association

filed suit contesting the constitutionality of the appeal process and the trial court in that case held that the process was unconstitutional and the Georgia Supreme Court on October 16, 1992 agreed that the appeal process was unconstitutional.

On October 9, 1991 (a year before the ruling agianst the appeal process) the North by Northwest Civic Association, Inc. ("Civic Assn.") filed its complaint in the Fulton Superior Court. The Civic Association is composed of 720 dues paying families who are residents of Fulton County and own homes in Fulton County. A concise summary of the complaint of the Civic Assn. is as follows: The new tax assessments of 1991 are excessive, arbitrary, unfair and do not represent the fair market value of the

individual properties. CLT and the Tax Assessors failed to consider existing uses and zoning in determining fair market values; they failed to equalize the fair market of each property with those of similar properties within the County; and the reappraisal would result in each taxpayer paying more than his or her fair, just and appropriate share of taxes. CLT and the Tax Assessors did not take into consideration the 50 and 100 year flood plain along the Chattahoochee River for a distance of 75 miles; they did not take into consideration the wet lands along the River; they did not take into consideration the requirements of the Chattachoochee River Corridor Act affecting all property along the Chattachoochee River; they

did not take into consideration the flood plain of the tributaries of the Chattanoochee River. CLT and the Tax Assessors failed to investigate sales of properties occurring within 2 or 3 months of the valuation date of January 1, 1991. They failed to take into consideration properties of comparable value. They failed to inspect adequately the properties that were appraised.

The opinion of the trial court on page 2, paragraph 5, reads as follows:

> "Employment of untrained and undertrained "listers", "reviewers" and "appraisers", coupled with inadequate training and supervision have caused substantial error in data to be introduced into the mass re-appraisal as to individual

residential properties".

The trial court further found on page 6 of its opinion as follows:

> "Without an appeal process and with the high potential for error, the mass reappraisal is arbitrary, capricious and unequal."

CLT employed about 73 people to gather the information about properties for appraisal purposes. Upon the trial of this case and in the brief which the Civic Assn. filed in the Georgia Supreme Court, the Civic Assn. introduced evidence of the immediate prior occupation and experience of the people employed by CLT, as follows: a dispatch clerk, construction laborer, home construction repairer, photographer, bookkeeper,

receptionist, airlines ramp service, door to door book salesman, accounting clerk, salesman in a retain store for photo supplies, inventory clerk, accounting clerk, clerk for a collection agency, restaurant employee who set up tables,bookkeeper in a retail music shop, U.S . postal clerk, youth director, telephone magazine salesman, retail clothing salesman and a person who prepared produce.

In addition, 56 of the people employed by CLT came from states other than from Georgia and 17 were from Georgia. Two came from New Guinea, one from Jamaica and one from Ethiopia. None of them had had any experience with real estate in Georgia, including the 17 from Georgia.

None of these employees, except one, had taken any course required by the

Georgia Certification Program for county appraisers.

The Civic Association introduced as evidence the flood plain documents regarding the Chattahoochee River prepared by the U.S. Corps of Engineers. The man in charge of the CLT program in Fulton County (Copeland) testified that he had never seen the documents. The R-1 zoning is the highest residential zoning in Atlanta and Fulton County; the same Copeland testified that he did not know what the R-1 zoning meant.

Civic Association introduced 95 affidavits at the hearing on Motion for Summary Judgment which described the errors which resulted in unfair re-assessments. One of the Affidavits was about Goat Island

BEST AVAILABLE COPY

which contains about five acres of land, located in the Chattahoochee River and is completely covered by water when the river floods. CLT raised the assessment from $3,375 to $645,000. The only possible basis for such valuation must be that CLT applied the same per square foot valuation for Goat Island as CLT applied to improved property with houses.

It is no wonder that so many mistakes were made. CLT employees did not even ask to enter houses for inspection. In most cases they simply drove by each parcel of land, made some measurements and took photographs. One condominium project contained 6 units of 2,200 square feet, 2 units of 2,260, 9 units of 2,880 and 6 units of 2,940 feet.

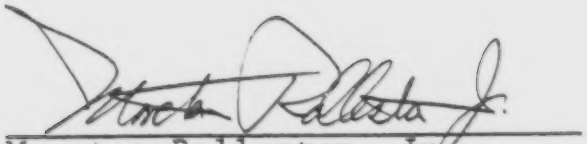
CLT appraised all units at exactly the same figure.

The brief description of the evidence before the trial court demonstrates why the trial court held the reappraisal was arbitrary, captricious and unequal.

The opinion of the Georgia Supreme Court held that the trial court had no equitable jurisdiction to consider the constitutionality of the CLT 1991 reappraisal because the Legislature in the Spring of 1991 enacted laws for a new appeal process which the Georgia Supreme Court held provided an adequate remedy at law. The only equitable jurisdiction exercised by the trial court was to grant an injunction. There is no reason why the trial court and the Georgia Supreme Court, sitting as a

court of law, could not rule upon the constitutionality of acts prohibited by the Fifth and Fourteenth Amendments. With all due respect to the Georgia Supreme Court, that Court dodged the constitutional question but effectively overruled the trial court's holdings that there was denial of due process and equal protection under the law.

Without help from this Court, thousands of taxpayers in Fulton County, who began the appeal process of their tax assessments, will end up in thousands of lawsuits in our courts - - - unnecessarily. Our court system does not need this additional burden. We, the people of Atlanta and Fulton County need the help of this Court to resolve these issues.



Moreton Rolleston, Jr.
Ga. State Bar No. 613700
Attorney for Petitioner

APPENDIX

In the Supreme Court of Georgia

Decided: NOV 16, 1992

S92A0973 and S92X0984

CITY OF ATLANTA v. NORTH BY NORTHWEST CIVIC ASSOCIATION, INC., et al; and vice versa.

S92A0974, S92X0982

JOINT CITY-COUNTY BOARD OF TAX ASSESSORS OF ATLANTA AND FULTON COUNTY et al V. NORTH BY NORTHWEST CIVIC ASSOCIATION, INC., et al; and vice versa

S92A0986

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC. v. COLE-LAYER-TRUMBLE COMPANY, et al.

S92A0988

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC. v. JOINT CITY-COUNTY BOARD OF TAX ASSESSORS OF ATLANTA AND FULTON COUNTY, et al.

SEARS-COLLINS, Justice

These appeals, stemming from an action brought by the North by Northwest Civic Association (the"civic association"), concern whether Fulton County ("the county") acted ultra vires in entering into a

contract with the Cole-Layer-Trumble Company ("CLT") for the mass reappraisal of property in the county and the City of Atlanta ("the city") and whether the reappraisal system violated due process and equal protection. The trial court granted summary judgment to the Civic Association. In doing so, it held that the county did not act ultra vires in entering into the contract with CLT, but that the mass reappraisal was unconstitutional in several respects. For the reasons that follow, we affirm the trial court's ruling that the county did not act ultra vires, but reverse the court's ruling, on summary judgment, that the mass reappraisal was unconstitutional. We thus reverse the grant of summary judgment to the civic association, and affirm the cross-appeals and direct appeals of the civic association.

Pursuant to Georgia Laws 1952, pp 2825 et seq.,the city and county created the Joint City-County Board of Tax Assessors of the City of Atlanta and Fulton County (the "the board of tax assessors'). On February 15, 1989, the city and the county entered into an agreement providing that they desired to reappraise property throughout the city and county; that the county would hire a qualified appraisal company to conduct the reappraisal; and that the city and county would each pay a certain percentage of the costs of the reappraisal. On that same date, the county entered into a contract with CLT, provideing that CLT would conduct a reappraisal of all property in the city and county. The county entered the contract under the authority of OCGA §48-5-298(A), which provides, among other things,

that a county may hire private individuals to assist in appraising property in the county.

CLT began working on the reappraisals in 1989 and finished in 1991.

On October 9, 1991, the civic association filed an action for declaratory judgment and injunctive relief against the board of tax assessors, the county, the city and CLT. The civic association is a non-profit corporation, whose membership consists of 722 families that own homes in the county. The civic association alleged that the board of tax assessors had mailed out notices of tax assessment pursuant to the reappraisals conducted by CLT, and that the valuations were excessive and did not represent the fair market value of the individual properties. The civic association further alleged that, for

several reasons, the contract that the county had made with CLT was ultra vires and that the methods used by CLT in reappraising the property violated due process and equal protection. The civic association also alleged that CLT had not adequately performed its duties under the contract; that to allow CLT to retain money paid to it would unjustly enrich CLT; and that for these reasons CLT should be required to return the money paid to it for the reappraisal. For the foregoing reasons, the civic association requested that the trial court declare the reappraisals by CLT void, enjoin the use of those reappraisals, and award attorney fees to the civic association.

The civic association moved for summary judgment and the city, county and board of tax assessors filed cross-motions for summary judgment. CLT filed

a motion to dismiss on the ground that the civic association lacked standing to bring any claim against CLT for the alleged breach of its contract with the county. On December 11, 1991, the trial court held a hearing on the motion and cross-motions for summary judgment and on the motion to dismiss.

On December 20, 1991, the trial court entered an order disposing of all issues but attorney fees. The court granted summary judgment to the civic association[1] and denied the cross-

---

[1] The court did not specifically state that it granted the motion for summary judgment of the civic association, but that is the inescapable conclusion from the record. The December 11 hearing was a hearing on the motion and cross-motions for summary judgment, and the trial court, in ruling in favor of the civic association concerning its claims against the city and county, did specifically deny summary judgment to the city and county. Moreover, in its December 20 order, the court stated that it was ruling on the motions for

motions for summary judgment of the city and county. The court also dismissed CLT as a party. In granting and denying these motions, the court ruled that the civic association had standing to contest the method, procedure, and constitutionality of the mass reappraisal; that the civic association did not have standing to sue a private contractor for breach of contract or for a refund of money; and that the county had not acted ultra vires in entering the contract with CLT. Concerning the mass reappraisal methods of CLT, the court held that they were sound and legal except for three exceptions, which caused the mass reappraisal to violate due process and equal protection.

---

summary judgment. Consistent with the foregoing, the civic association acknowledges that the court granted summary judgment to it.

First, the court found a due process violation. This violation, the court found, stemmed from a prior decision of this Court in litigation that arose after the same mass reappraisal by CLT. Lonax v.Lee, 261 Ga. 575, 579-581 (3) (408 SE2d 788) (1991). In Lomax, decided on October 2, 1991, this Court held that the mechanism for appeals from assessments by the board of tax assessors was unconstitutional. Id. at 579-581. In the present case, the court found that the mass reappraisal by CLT violated due process because of the lack of an appeal process to correct individual errors made by CLT. The court ordered that, until the General Assembly created an appeal procedure, the board of tax assessors, the city, and the county were restrained from use of the mass reappraisals. The

court further ruled that once the appeal procedure became law all taxpayers would have 30 days in which to appeal their reappraisal.

Second, the court found that, as to residential property only, the mass reappraisal created artificial and inaccurate neighborhoods, which led to unequal valuation. To remedy this problem, the court ordered the board of tax assessors to create four panels of real estate brokers for each tax zone created by CLT and to have those panels review, and adjust or redraw if necessary, the neighborhoods within those tax zones. The court further specified that, if the panels adjusted a neighborhood, then any residential parcel moved in or out of the neighborhood would have to be reappraised. Moreover, the court ordered that, if more than a fourth of the residential

parcels in a neighborhood were adjusted, then all the residences in the readjusted neighborhood would have to be reappraised.

Third, the court ruled that the mass reappraisal arbitrarily and capriciously affected residential parcels in excess of two acres of land. In doing so, the court focused on only the land in such lots that exceeded the two acres that immediately surrounded the taxpayer's residence ("the excess land"). The court based its finding of unconstitutionality on two grounds. First, the court relied on its finding that the reappraisal set the square footage price of "the excess land" at the same price as developed lots of two acres or less. The court found this unreasonable because, it said, developed lots of less than two acres have street frontage and utilities in place,whereas "the excess land" did not. Second, the court

relied on its finding that CLT failed, in appraising the value of "the excess land," to consider topography, engineering requirements, zoning, flood plain and wetlands restrictions, utility easements, and other governmental restrictions. The court ruled that these shortcomings meant the reappraisal of residential lots over two acres violated due process and equal protection. The court permanently enjoined the use of the reappraisal of "the excess land". The court ordered "the excess land" to be individually reevaluated using traditional appraisal methods and procedures.

The court subsequently entered an order ruling that no basis existed for an award of attorney fees to the civic association.

The parties have filed various appeals and cross-appeals from the trial

court's orders. In Case No. S92A0973, the city raises issues concerning the trial court's holding that the mass reappraisal by CLT was unconstitutional. In case No. S92A0974, the board of tax assessors and the county (hereinafter the board and the county will be referred to as the county) raise the same issues presented by the city's appeal in Case No. S92A0973.

In its cross-appeals in Case Nos. S92X0982 and S92X0984 and in its direct appeal in Case No. S92A0986, the civic association contends that the trial court erred by holding that the civic association did not have standing to sue CLT for a return of the money paid to it by the city and county, and that the trial court erred by holding that the county's contract with CLT was not ultra vires. In its direct appeal in

Case No. S92A0988, the civic association contends the trial court erred by holding that no basis existed for awarding attorney fees to the civic association.

After the parties filed their notices of appeal to this Court, but before the record was docketed here, the General Assembly enacted a procedure for appeals from assessments by the Board of Tax Assessors. Ga.Laws, 1992, pp. 1676-77 (effective April 15, 1992). Moreover, on October 16, 1992,we held that the provisions of Ga. Laws 1992, pp.1676-77, provide a complete appeal remedy for taxpayers. City of Atlanta v.Lee, ---Ga.---(---SE2d---) (1992) (case no. S92A0801).

Case Nos. S92A0973 and S92A0974.

1.In these cases the city and the county contend that the recent enactment of an appeal process for taxpayers moots the trial court's ruling that the

mass reappraisal violated due process because of the lack of an appeal process; that the taxpayer's right to pursue an appeal of their appraisals precluded the trial court from exercising its equitable jurisdiction to inquire into the constitutionality of the methodology used by CLT; and that, in any event, the trial court erred in ruling that CLT's creation of 800 neighborhoods and its appraisal of lots in excess of two acres violated due process and equal protection. We agree with all these contentions.

2. We first address the contention of the city and the county that the trial court's ruling that, without an appeal process to determine if any reappraisals were erroneous, the re-appraisals violated due process. The city and county contend that the appeal process enacted by the General Assembly

on April 15, 1992, moots the trial court's ruling that the mass reappraisal violated due process because of the lack of an appeal process to correct errors on individual properties. The civic association does not oppose this contention by the city and county, and we agree with it, since taxpayers may now appeal from assessments based on the reappraisals.

3. The city and county also contend that the trial court should not have exercised its equitable jurisdiction to inquire into the constitutionality of CLT's appraisal methods. The city and county contend that the constitutional attacks had to be made in appeals from assessments, as such appeals provided an adequate remedy at law and thus prohibit the exercise of a court's equitable jurisdiction. We agree.

In numerous cases we have held

that a superior court should not exercise its equitable jurisdiction in tax assessment cases to address issues concerning valuation, taxability, uniformity, and constitutionality, including the constitutionality of appraisal methods. Wilkes v.Redding, 242 Ga. 78, 79 (247 SE2d 872) (1978); Barr v. Jackson County, 238 Ga. 332 (232 SE2d 923) (1977); Tax Assessors v. Chitwood, 235 Ga. 147, 153-54 (218 SE2d 759) (1975); Chilivis v. Backus, 236 Ga 88, 90 (222 SE2d 371) (1976). We have held that a taxpayer may raise such issues in a statutory appeal, and that such appeals constitute an adequate remedy at law, precluding the court's exercise of its equitable powers. Wilkes, supra, 242 Ga. at 79. These cases established that as a matter of policy and judicial economy ad valorem tax disputes should be resolved first at the local level through the appeal

procedures created specifically for that purpose. In this case, although the statutory appeal procedures were not in place at the time of the hearing, we conclude that the trial court's ruling that taxpayers would have 30 days after the new appeal procedure was enacted to exercise their right to appeal, ensured that that appeal procedure would be an adequate remeby at law once enacted. Accordingly, the court should not have exercised its equitable jurisdiction to determine constitutional questions regarding the method of reappraisal.

4. The city and county further contend that, even assuming the trial court should have addressed the constitutionality of the appraisal methods, the trial court erred in granting summary judgment to the civic association on the ground that CLT's creation of

neighborhoods violated due process and equal protection. We agree.

At the outset, we note that the trial court granted summary judgment to the civic association. The trial court could have, in and equitable case such as this, foregone consideration of the motion and cross-motions for summary judgment, and could have, instead, conducted a non-jury trial in which it resolved all factural issues as the trier of fact. See Colquitt County Hospital Authority v. Health Star, Inc., 262 Ga. 285,286, fn. 1 (---SE2d---) (1992).However, the court did not do so. Moreover, the fact that the trial court made findings of fact and conclusions of law does not change the standard of review on appeal of summary judgments. Harrell v. Louis Smith Mem. Hospt. 197 Ga. App. 189 (1) (397 SE2d 746) (1990); Wright, Miller

& Kane, Federal Practice and Procedure: Civil §2716 (2d ed.1983).[2] For these reasons, we therefore must review the record to determine if the trial court properly granted summary judgment to the civic association.

> To succeed on a motion for summary judgment, the movant must show that there is no genuine issue as to any material fact and that he or she is entitled to judgment as a matter of law. OCGA §9-11-56(c). In ruling on a motion for summary judgment, a trial court is

---

[2] In this regard, although it can be helpful for a trial court on summary judgment to specify its findings of undisputed facts, the trial court should not resolve factual disputes.

> not empowered to resolve disputed issues of material fact but merely to determine if such issues exist for resolution. [Cites omitted.] "[I]f genuine issues of fact do exist, summary judgment must be denied in a proceeding for equitable relief." 10A C. Wright, A. Miller, & M. Kane, Federal Practice & Procedure: Civil §2731 (2d ed. 1983).[Colquitt County HospitalAuthority, supra, 262 Ga. at 285-86].

Moreover, "[a]ny doubt as to the existence of substantial issues of fact is resolved against the movant. The party opposing the motion is to be given the benefit of all reasonable doubt and all favorable inferences that may be derived from the evidence produced."

Kelly v. Vargo, 261 Ga. 422 (405 SE2d 36) (1991).

In this case, the trial court based its conclusion that CLT's method of creating neighborhoods violated due process and equal protection on its findings that CLT created "artificial 'neighborhoods'" that "did not reflect real or existing neighborhoods or had boundaries that included contiguous areas that in actuality fell into other neighborhoods." However,not only do we conclude that these findings of fact about CLT's creation of neighborhoods are disputed, we find no evidence in the record to support them.

First, there is no evidence in the record as to what 800 neighborhoods were created, and thus there is no support for the findings that the neighborhoods created by CLT had boundaries that

included areas that "in actuality" fell into other neighborhoods. Moreover, the record contains no evidence of any instance in which a neighborhood created by CLT did not actually match a "real" or "existing" neighborhood. We must conclude, then, that there is no evidence to support a finding that the actual neighborhoods created by CLT in fact did not "reflect" "real" or "existing" neighborhoods.

The trial court's order, however, could be read as based, first, on a finding that CLT created neighborhoods without regard to what was actually reflected on the ground in any given part of the city or county, and as based, second, on the reasoning that this method of creating neighborhoods would inevitably lead to neighborhoods that did not reflect real or existing

neighborhoods (without regard to whether the method had actually done so). However, *we find no support in the record* for a finding that CLT created neighborhoods without regard for what was actually reflected on the ground in the city and county. In this regard, the chairman of the board of tax assessors, testified that in creating neighborhoods the object was to identify those properties that were "continuous" and were subject to the same physical and economic influences.

Further, the manager for CLT that was in charge of this project testified that CLT first divided the city and county into four major zones, and then subdivided those areas into neighborhoods that

> reflected what was on the ground such as similar housing characteristics, similar price range, age groups, quality

> ranges and the result that it would be a reasonable statistical measuring base for comparison of sales. We also compared our results to other studies that have been done by other departments such as the Fulton County Planning Dept., City of Atlanta Planning, and ...[the board of tax assessors]... We also employed a consultant ...whose principal was the former head of the real estate board of the State of Georgia to look over both our results and compare them to previous results and supply his own knowledge to this.

Based on this evidence and on the absence of any evidence to the contrary, we must conclude the record does not

support a finding that CLT's method of creating neighborhoods would inevitably lead t neighborhoods that did not "reflect real or existing neighborhoods."

For the foregoing reasons, we reverse the grant of summary judgment to the extent it was based on the conclusion that CLT's creation of neighborhoods violated due process and equal protection.

5. We next addres the city's and county's contention that the trial court erred by granting summary judgment to the civic association on the ground that the reappraisal of property in excess of two acres violated equal protection and due process. We agree with this contention as well.

As we have previously noted, the

trial court based this ruling on two findings of fact. The first was that the reappraisal set the square footage price of "the excess land" at the same price as developed lots of two acres or less. The second was that in appraising "the excess land" CLT did not consider factors such as topography, the lack of utilities and street frontage, and zoning, floodplain and easement restrictions.

Without citing the evidence in detail, we conclude that there was, at a minimum, a genuine dispute as to each one of the foregoing facts,[3] and that the trial court erred in

---

[3] In this regard, we find no evidence that CLT set the square footage price of "the excess land" at the same price as developed lots of two acres or less.

As for CLT's failure to consider factors such as topography and floor plain restrictions, numerous property

resolving the disputed facts and in granting summary judgment to the civic association on the ground the appraisal of land in excess of two acres violated due process and equal protection.

---

owners filed affidavits stating that they thought their assessments were in excess of fair market value because part of their property was in a floodplain. These property owners, however, did not state if they knew whether or not CLT had considered this fact in setting the fair market value of their property. Moreover, although one of the project managers for CLT stated that he personally was unfamiliar with certian floodplain documents, he also stated that the appropriate appraisers might have had knowledge of the documents and that in any event, the appraisers did consider topography, zoning, utility and floodplain restrictions, and other such factors in determining the value of land for each parcel.

Case Nos. S92X0982, S92X0984, S92A0986, and S92A0988.

6. In its cross-appeals and in its direct appeal in Case No. S92A0986, the civic association contends that, for several reasons, the contract between the county and CLT was ultra vires and illegal; that the trial court erred in holding otherwise; and that therefore we should affirm the trial court's grant of injunctive relief. In the cross-appeals and the direct appeal in Case No. S92A0986, the civic association also contends that the trial court erred by holding that it did not have standing to sue CLT for the return of the money paid to it by the city and county. In Case No. S92A0988, the civic association contends that, if we hold that the civic association has standing to sue for the return of the money paid to CLT,

then the trial court erred by holding that there was no basis for awarding attorney fees to the civic association

7. We first address the civic association's contention that the contract between the county and CLT was an ultra vires act. In this regard, we note that the trial court properly exercised its equitable jurisdiction to address these issues, as a taxpayer has standing to seek to enjoin the ultra vires acts of a governing authority. See Newsome v. City of Union Point, 249 Ga 434 (291 SE2d 712) (1982).

a. For the act of a local government to be considered ultra vires, it must be beyond the "power or authority of the [local government] to perform under any circumstances." Id. at 436. "'[T]here is a distinction between the doing by a corporation of an act beyond

the scope of the powers granted to it by law, and an irregularity in the exercise of the granted powers.'" Id. at 437 (quoting Georgia Granite R.Co. v. Miller, 144 Ga. 665 (2a) (87 SE 897) (1915)). An irregularity in the exercise of a granted power does not render the act in question ultra vires. Newsome, supra, 249 Ga. at 437.

b. Although the civic association notes that OCGA §48-5-298 (a) authorized Fulton County to enter the contract with CLT, it appears to argue that the contract was ultra vires on the ground the legislature cannot constitutionally authorize a county to delegate one of its duties to a private individual. We conclude, however, that the civic association has not met its burden to show that §48-5-298(a) is unconstitutional. In this regard, the civic

association has not either clearly designated the provision of the 1983 Georgia Constitution that it contends has been violated or shown in what respects the statute, or some part of it, violates that constitutional provision. Wallin v. State, 248 Ga. 29, 30 (1) (279 SE2d 687) (1981); Chester v. state, 262 Ga. 85, 88 (3) (--- SE2d ---)(1992). This contention therefore offers no ground for affirming the trial court.

c. The civic association also argues that the contract was an ultra vires act because the minutes of the meeting at which the county approved the contract with CLT were not signed. We do not find that this omission renders the contract ultra vires. First, in the absence of any showing that §48-5-298 (a) is unconstitutional,

we must hold that the county had the legislative authority to enter the contract in question. Thus, the fact that the county may have committed a procedual irregularity in entering the contract doe not render the contract ultra vires. Newsome, supra, 249 Ga. at 436-37. Moreover, because the contract was unanimously approved by the Fulton County Board of Commissioners, because the minutes of the meeting at which the contract was approved were ratified by the Fulton County Board of Commissioners at their next meeting, and because the contract was signed and placed on the minutes, the contract was validly entered. See OCGA §36-10-1; Hatcher v. Hancock County Commrs., 239 Ga. 229, 230 (2) (236 SE2d 577) (1977) (contracts with county must be in

writing and entered on the minutes.

d. The civic association also contends that the contract with CLT was ultra vires because CLT was not authorized to do business in Georgia when it entered the contract. This contention, however, is contradicted by the record, which shows that CLT was authorized to do business in Georgia.

e. The civic association also contends that CLT did not comply with the minority participation provision of its contract, and the civic association apparently contends that this alleged failure renders the contract ultra vires. We find no merit to this contention. First, the record does not support the civic association's assertion that CLT did not comply with the minority participation requirement.

Moreover, even if CLT did not comply with this contractual provisioin, it would not support a holding that the county acted ultra vires in entering the contract. Newsome, 249 Ga. at 436-37. Finally, to the extent this contention can be read as an attempt by the civic association to bring a breach of contract claim against CLT, we hold that the civic association does not have standing to assert such a claim. Bacus v. Chilivis, 236 Ga. 500, 501-503 (224 SE2d 370) (1976).

8. We now turn to the civic association's contention that the trial court erred by ruling that it did not have standing to sue CLT for the return of money paid to it. This issue is controlled adversely to the civic association by Backus v. Chilivis, in which we held that "any suit to recover

money of a breached contract must be brought by the county itself. Citizens and taxpayers do not have standing to bring such a suit." Id. at 501. The trial court therefore properly ruled that the civic association did not have standing to sue CLT for a return of money paid to it by the county.

9. For the foregoing reasons we affirm the cross-appeals in Case Nos. S92X0982 and S9X0984 and the direct appeal in Case No. S92A0986.

10. We now turn to case No. S92A0988, in which the civic association contend the trial court erred in ruling that there was no basis for awarding attorney fees to the civic association. However, because as the civic association has acknowledged, this contention was dependent upon the success of its contention that it could sue CLT for the return of money paid to it by the county,

and because we have resolved that issue adversely to the civic association, we hold the trial court did not err in ruling that no basis exists for awarding attorney fees to the civic association.

Accordingly, we affirm Case No. S92A0988.

Case Nos. S92A0973 & S92A0974. Judgment reversed. Clarke, C.J. Bell, P.J., and Hunt, Fletcher , and Benham, JJ., concur.

Case Nos. S92X0982 & S92X0984. Judgment affirmed. Clarke, C.J., Bell, P.J., and Hunt, Fletcher, and Benham, J.J., concur.

Case Nos. S92A0986 & S92A0988. Judgment affirmed. Clarke, C.J., Bell, P.J., and Hunt, Fletcher and Benham, JJ, concur.

Supreme Court, U.S.
FILED
DEC 28 1992
OFFICE OF THE CLERK

92-1125

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC.,

Petitioner,

Vs.

CITY OF ATLANTA, et al

Respondents.

PETITION FOR A WRIT OF CERTIORARI

TO SUPREME COURT OF GEORGIA

SUPPLEMENTAL APPENDIX

Moreton Rolleston, Jr.
Suite 1870, Riverwood 100
3350 Cumberland Circle, N.W.
(404) 988-9300
Attorney for Petitioner

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC.,

Petitioner,

Vs.

CITY OF ATLANTA, et al

Respondents.

PETITION FOR A WRIT OF CERTIORARI

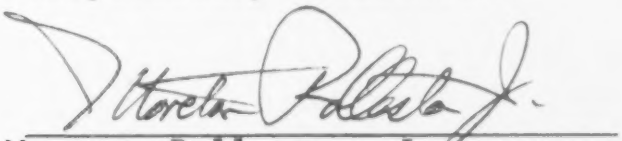
TO SUPREME COURT OF GEORGIA

SUPPLEMENTAL APPENDIX

The first and only hearing regarding the original complaint was at a hearing on Motion For Summary Judgment in Fulton Superior Court, Georgia (trial court) on the third

day of December , 1991. The Opinion of the trial court is set forth hereinafter beginning at SA-1 (Supplemental Appendix-1). All appeals were filed within the statutory period of thirty days.

Respectfully submitted,



Moreton Rolleston, Jr.
Attorney for Petitioner

SUPPLEMENTAL APPENDIX

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

CIVIL ACTION FILE NO. D-93210

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC., Plaintiffs

vs.

JOINT CITY-COUNTY BOARD OF TAX ASSESSORS OF CITY OF ATLANTA AND FULTON COUNTY; COUNTY COMMISSIONERS OF FULTON COUNTY, GEORGIA; CITY OF ATLANTA AND COLE-LAYER-TRUMBLE COMPANY, Defendants.

O R D E R

After hearing argument and considering the entire record as well as hearing oral testimony, the court finds on the motions for summary judgment and injunction:

1.

The Plaintiff has standing in a taxpayer suit to test and to challenge expenditure of tax monies; Plaintiff lacks standing to sue a private

contractor for breach of contract or refund of monies because only the governmental entities have such right and power. Plaintiff has standing to challenge the method, procedure and constitutionality of the mass re-appraisal by a private person delegated by contract to perform such governmental function.

2.

The Court finds that the acts of Fulton County Commissioenrs and the City of Atlanta were not ultra vires in entering into the contract with Cole-Layer-Trumble Company (hereinafter referred to as CLT).

3.

The Court finds that any changes in domestication of CLT, its parent company or any related company during

the performance of the contract does not void or make voidable the contract.

4.

The Court finds that the basic design and methodology of CLT as it relates to residential mass reappraisal appears, based on the evidence, to be sound and legal with three (3) exceptions. These three exceptions cause the mass reappraisal to be unconstitutional in violation of due process under Article I, Sec.I, Par.I, and equal protection under Article I, Sec.I, Par.II, of the 1983 Constitution of Georgia. These unconstitutional flaws are remediable and will permit salvage of the re-appraisal with some additional rework and changes.

5.

Employment of untrained and under-

trained "listers", "reviewers" and appraisers," coupled with inadequate training and supervision have caused substantial error in data to be introduced into the mass reappraisal as to individual residential properties. The design of the mass reappraisal assumed that errors as to individual taxpayers would be corrected through individual appeals. The incident of contested reappraisals resulted in approximately 25,000 informal proceedings between the individual taxpayer and CLT staff and 30,000 demands for arbitration under the unconstitutional procedure. CLT had engaged in substantial prior review and correction to avoid inaccurate or erroneous data. Without an appeal process and with the high potential for error, the

mass reappraisal is arbitrary, capricious and unequal.

6.

Unless and until the General Assembly, by statute, creates an appeal procedure that complies with due process and permits adjustment and correction to assure equal protection, the Defendants are restrained and enjoined from the use of such mass reappraisals and must either use prior appraisals or new appraisals done in coventional manner without use of the mass reappraisal computer program. Subdivided property and new construction which had no appraisals prior to the mass reappraisal conducted by CLT must be appraised using the methodology that existed prior to the mass reappraisal. Once the appropriate statute has been passed and becomes law

by the governor's signature, the tax assessors may send out notices of re-appraisal under the mass reappraisal. All taxpayers shall have until thirty (30) days after the statute becomes effective within which to appeal or to protest any appraisal or reappraisal made for 1991 or 1992, or subsequent years, whether or not they made a protest under the old system of arbitration. The tax assessors must give timely written notice to all taxpayers not only of any reappraisal but also of the new appeal procedure.

7.

As to residential property only, the mass reappraisal created artificial "neighborhoods" which in many cases did not reflect real or existing neighborhoods or had boundaries that

included contiguous areas that in actuality fell into other neighborhoods. "Neighborhoods" within the mass re-appraisal methodology are critical in establishing and defining comparable values bases upon actual sales. Place-ment aribtrarily and capriciously of property into the wrong neighborhood will cause unequal evaluation upward and downward because location is a primary determinant of value either on the market approach or the multiple regression of value factors. The artificial "neighborhoods" created by the County must be evaluated and adjusted by real estate brokers to reflect the real estate market. Those "neighborhoods" which accurately reflect the market or actual neighborhoods will stand as drawn; "neighborhoods" which do not exist in the market or reality,

which are too large or too small or which overlay existing neighborhoods must be adjusted to coincide with generally accepted real estate market or reality as the neighborhood.

8.

To achieve such review and proper placement of residential property in the proper "neighborhood" and to properly define all applicable "neighborhoods" to reflect the market or reality, four panels of at least seven nor more than fifteen (15) real estate brokers per panel, shall be created by the Joint City-County Board of Tax Assessors of the City of Atlanta and Fulton County; the mass reappraisal by CLT has divided Fulton County into four tax zones withing which it subdivided the area into "neighborhoods" by natural or man-made landmarks; for each such

tax zone one panel shall be organized from real estate brokers who have had at least ten (10) years experience selling within such tax zone; a quorum of any panel shall be a majority plus one of the appointed members of such panel; a simple majority vote of those brokers present shall govern any applicable vote. Each panel shall review each "neighborhood" within the tax zone; if a "neighborhood" should in actuality lie in a neighborhood lying in two zones, then such neighborhood should be shifted to the zone with the largest number of residences in the actual neighborhood. The panels shall vote to approve, adjust or redraw "neighborhoods" to accurately reflect real neighborhoods or neighborhoods reflected by the real estate market, whichever configuration most accurately

reflects fair market values. If the panel members cannot agree on what constitutes a neighborhood, they may consult any prior tax plats, zoning maps, neighborhood planning unit subdivisions, street maps and guides, utility maps or designation plats or historical records. The primary purpose of the panel is to accurately locate residential property in the appropriate neighborhood which best reflects market forces to establish the fair market value of such property.

9.

Where an adjustment results in the change of a "neighborhood", only those residential parcels moved into or out of the neighborhood need have a recalculation of five (5) comparable sales prices and the re-evaluation against the cost approach and consideration of

the multiple regression. If all or three-fourths of the residential parcels in a neighborhood do not require recalculation because they were not subject to adjustment to a different "neighborhood", then no recalculation of such parcels shall be necessary. However, if more than a fourth of the residential parcels in a "neighborhood" are adjusted, all the residential parcels shall be recalculated in the readjusted "neighborhood" using the five comparables most applicable to such "neighborhood" and the individual property.

10.

The mass appraisal methodology and computer driven analysis arbitrarily and capriciously reassesses and re-evaluates residential parcels containing in excess of two acres of land because such re-evaluation treats the square footage price of land in excess of two

acres at the same price as developed lots of two acres or less which have street frontage and utilities in place as if such excess land had been developed with streets, gutters, sanitary sewers, storm sewers, water, culverts and other utilities and fails to adjust the valuation for topography, engineering requirements, zoning flood plain, wetlands restrictions, Chattahoochee Development Corridor, utility easements and other governmental restrictions. Such re-evaluation and reappraisals of residential lots in excess of two acres under the mass reappraisal methods of CLT violate equal protection and due process by such procedures and methods. In searching for comparables for such undeveloped portions of residential lots, the computer driven search

can search beyond the "neighborhood" to select undeveloped lot sales which lack true comparability in location or character. The Court permanently restrains and enjoins the use of the mass reappraisal of CLT to more than the two acres immediately surrounding the residence; land in excess of two acres must be individually re-evaluated and reappraised using traditional and standard appraisal methods and procedures, taking into consideration development costs, topography, engineering requirements, zoning, drainage easements, flood plain, wetlands restrictions, Chattahoochee [illegible]velopment Corridor restrictions, utility easements and other governmental restrictions, utility and marketability.

11.

While such re-evaluations and

reassessments of residential lots in excess of two acres is being individually done, the evaluation of the two acres and residence can be separately re-evaluated and reassessed under the mass reappraisal of CLT. When the "neighborhoods" have been reviewed, readjusted and revalued; when the appeal process is in place, and when the residence and two acres of lots exceeding two acres have been separately reappraised by the CLT method, mass reappraisal shall satisfy all statutory and constitutional requirements notwithstanding that all lots of residential land in excess of two acres have not been completely and individually re-evaluated and reappraised by standard and traditional methods. At such time, the tax assessors may reassess land in Fulton County and the City of Atlanta

BEST AVAILA

based upon the mass reappraisal of CLT with such mandated corrections.

12.

The individual re-evaluation and reassessment of residential land in excess of two acres shall proceed expeditiously, using standard and traditional appraisal methods "neighborhood" by "neighborhood" until completed. Until such individual reappraisals can be compelted, prior appraisals shall be used if such reappraisal has not been completed prior to the sub mission of the tax digest to the Revenue Commissioner.

SO ORDERED this 20th day of December, 1991.

/s/ Frank M. Edridge

Frank M. Eldridge, Judge
Fulton Superior Court
Atlanta Judicial Circuit

BLE COPY